

**RESOLUTION OF THE NASA MINORITY BUSINESS
RESOURCE ADVISORY COMMITTEE (MBRAC) ON
MODEL PRINCIPLES INVOLVING TEAMING AGREEMENTS
BETWEEN MAJOR PRIME CONTRACTORS AND SMALL BUSINESSES**

(“MBRAC MODEL PRINCIPLES ON TEAMING AGREEMENTS”)

- **WHEREAS**, the Minority Business Resource Advisory Committee (MBRAC) was established in July 1992, primarily to advise the National Aeronautics and Space Administration (NASA) on how to more effectively utilize small disadvantaged businesses;
- **WHEREAS**, past MBRAC recommendations accepted by the agency have improved NASA’s utilization of not only small disadvantaged businesses, but its use of small businesses in general;
- **WHEREAS**, due to technical need, Federal subcontracting goal requirements, and the unique subcontracting policies adopted by NASA in large part as a result of the recommendations of MBRAC, large aerospace contractors are, have been, and will be seeking out small businesses to “team” with them as subcontractors when competing for large NASA contracts;
- **WHEREAS**, MBRAC recognizes that large aerospace companies and small businesses often enter into “teaming agreements” to formalize their relationship with one another prior to competing for NASA contracts; and,
- **WHEREAS**, MBRAC desires to promote good faith and fair dealing between major prime contractors and small businesses in the formation of teaming arrangements;
- **IT IS HEREBY RESOLVED THAT**, the NASA Minority Business Resource Advisory Committee sets forth the following as model principles that should be applied in the formation of teaming agreements between major corporate prime contractors and small businesses as subcontractors in NASA contracts:

First Principle:

FORMALITY OF TEAMING AGREEMENTS

- Teaming agreements should be in writing.
- Written teaming agreements more clearly ascertain the intentions, obligations, and responsibilities of the parties.

Second Principle:

ADVANCE CONFIDENTIALITY AND NON DISCLOSURE

- Potential teaming partners should have their proprietary data protected during the time when the parties are evaluating whether to form a team.
- Such document should be in writing and signed by both parties *prior* to the time a decision is made on whether or not to team.
- The agreement should be a different document than the teaming agreement.
- The document should contain responsibilities on the part of the potential teaming partners and other relevant parties on the treatment of proprietary data during the time when the parties are evaluating *whether* to form a team.

Third Principle:

NOTICE OF INTENT

- It should clearly be stated in the teaming agreement whether or not the prime contractor intends to award a subcontract to the potential subcontractor if the prime contractor is awarded the contract in question.
- Alternatively, the teaming agreement should contain language on whether the agreement represents a non-binding expression of interest to award a subcontract to the potential subcontractor in the future.
- Moreover, the teaming agreement should clearly point out whether there are any conditions relating to whether or not the prime contractor will award a potential subcontractor a subcontract should it be awarded the prime contract

Fourth Principle:

ESSENTIAL TERMS OF THE TEAMING AGREEMENT

- If the prime contractor indeed intends to award a subcontract to the potential subcontractor should the prime in fact be awarded the Federal contract, the teaming agreement should contain all of the conditions essential to an implementing subcontract for the portion of work that the potential subcontractor is responsible for performing.
- Such terms should include, but not be limited to: 1) an explicit identification of the work the subcontractor will perform; 2) the price to be paid for the work, which may be defined in terms of the percentage of the total value of the contract;

3) the estimated quantity of goods or services involved; 4) the anticipated time of performance; 5) the date of delivery of the work; and, 6) the time for payment.

Fifth Principle: PROTECTION OF INTELLECTUAL PROPERTY

- Parties to a teaming agreement are expected to insist upon clauses within the teaming agreement that limit exposure of their intellectual property and other proprietary data to a degree that would not undermine the value of the company itself.

Sixth Principle: TERMINATION CLAUSES

- The teaming agreement should contain no termination clauses that contradict the intention of the prime contractor to award a subcontract to a potential subcontractor.

Seventh Principle: DISCLOSURE REQUIREMENTS

- The teaming agreement should contain language requiring the prime contractor to notify the potential subcontractor if any changes are made to the potential subcontractor's statement of work, amount of work, price of work or the manner in which the work is to be delivered under the contract in question.

Eighth Principle: NEGOTIATION OF THE TEAMING AGREEMENT

- Both parties should recognize the prerogative of either party to utilize an attorney to negotiate the terms of the teaming agreement with the other party.

Ninth Principle: DISPUTES AND DAMAGES

- To the greatest extent possible the teaming agreement should contain clauses to resolve disputes arising from the teaming agreement utilizing alternative dispute resolution methods such as mediation and arbitration.

- Both parties should recognize the right of the other party to include clauses providing the payment of damages for a breach of the teaming agreement.
- **IT IS FURTHER RESOLVED THAT**, these model principles be disseminated to the widest extent possible to NASA's major prime contractors, small businesses, and other interested parties, and that this document be posted on the website of the NASA Office of Small and Disadvantaged Business Utilization as a best practice;
- While MBRAC recognizes that the above model principles do not represent an official policy on the part of NASA and, therefore, cannot be mandated between potential parties, it is MBRAC's desire that such principles be initially viewed as an educational and informational tool by small and large businesses and be voluntarily accepted among all parties involved in teaming arrangements, thus becoming the standard practice for the formation of teaming agreements between major corporate prime contractors and small businesses within the aerospace industry and beyond.

Be it hereby resolved on 12th day of September, 2003 in Washington, D.C. at a meeting of the NASA Minority Business Resource Advisory Committee:

Signed

Knox W. Tull, Jr.
Chairman, MRAC

Signed

Ralph C. Thomas, III
Executive Secretary

Signed

Wendell Maddox
Chairman, MBRAC Best Practices
Panel

A list of the members of the NASA Minority Business Resource Advisory Council is attached.

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2001-2003**

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